

A RESOLUTION

BY THE PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

**A RESOLUTION AUTHORIZING THE SETTLEMENT
OF ALL CLAIMS RESULTING FROM THE CASE OF
FOGARTY V. POCOCK, ET. AL., UNITED STATES 02-*R*-1002
DISTRICT COURT, NORTHERN DISTRICT OF GEORGIA,
ATLANTA DIVISION, CIVIL ACTION FILE NUMBER
1:01-CV-2506-CAP, IN AN AMOUNT NOT TO EXCEED
\$5,000.00; AUTHORIZING THE CHIEF FINANCIAL
OFFICER TO DISBURSE THE SETTLEMENT AMOUNT;
AND FOR OTHER PURPOSES.**

WHEREAS, Fogarty v. Pocock, et. al., Civil Action Number 1:01-CV-2506-CAP, is a case pending in the United States District Court, Northern District of Georgia, Atlanta Division, in which the City of Atlanta and several employees of the Department of Corrections, who were employed by the City of Atlanta at the time of Plaintiff's incarceration in the Atlanta City Detention Center Annex, are named as Defendants; and

WHEREAS, the City of Atlanta and Thomas Pocock, I. Ney Lawson, Kenneth Stevens, Melinda Wells, Arnitra Mathis, and Virginia Ingram, who are employed by the City of Atlanta Department of Corrections, are named as Defendants to the suit; and

WHEREAS, the Plaintiff alleges that he has suffered cruel and unusual punishment in violation of the Eighth Amendment and 42 U.S.C. § 1983 while detained at the Atlanta Pretrial Detention Center Annex through deliberate indifference to his health caused by unwilling exposure to Environmental Tobacco Smoke and inadequate medical treatment during an incident requiring treatment for his kidney; and

WHEREAS, the Plaintiff further alleges that the conditions in the Annex, which houses federal inmates under an agreement with the U.S. Marshall, violated his constitutional rights, claiming, inter alia, that barber conditions are unlicensed; linens and bathroom facilities are unsanitary; meals are unbalanced and unhealthy; etc.; and

WHEREAS, Plaintiff intends to seek certification of his case as a class action and appointment of an attorney to represent the class in the event this case is not settled; and

WHEREAS, the Plaintiff has agreed to accept \$5,000.00 in settlement of all claims against the City of Atlanta and/or its agents; and

WHEREAS, the Plaintiff has brought forth claims for which the further defense and/or preparation for trial could reasonably be anticipated to cause the City of Atlanta to incur expenses in excess of the amount offered by Plaintiff for full settlement of all claims against the City of Atlanta and/or its agents; and

WHEREAS, the Interim City Attorney opines that it will cost more than \$5,000.00 to defend this case through discovery, and motions, prior to any trial of this matter; and

WHEREAS, the City Attorney has done an extensive review of the facts and the law and has determined that the City's potential financial exposure pursuant to Plaintiff's claims is in excess of the settlement amount offered; and

WHEREAS, by this settlement, Defendants admit no liability; and

WHEREAS, the City Attorney considers it to be in the best interest of the City to resolve this matter and recommends that the City pay the amount of \$5,000.00 to settle all claims,

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES THAT:

SECTION 1. The City Attorney is hereby authorized to settle the case of Fogarty v. Pocock, et. al., for an amount not to exceed Five Thousand Dollars and Zero Cents (\$5,000.00).

SECTION 2. The Chief Financial Officer is authorized to pay a total amount not to exceed \$5,000.00 to Timothy Sean Fogarty to settle this case, from Account No. 1A01-529017-T31001.